

VZCZCXRO7232
RR RUEHMA RUEHPA
DE RUEHMA #1067/01 3651555
ZNR UUUUU ZZH
R 301555Z DEC 08
FM AMEMBASSY MONROVIA
TO RUEHC/SECSTATE WASHDC 0648
RUCPDO/USDOC WASHDC
INFO RUEHZK/ECOWAS COLLECTIVE

UNCLAS SECTION 01 OF 02 MONROVIA 001067

SENSITIVE
SIPDIS

E.O. 12598: N/A
TAGS: [EINV](#) [ECON](#) [EFIN](#) [OPIC](#) [LI](#)
SUBJECT: LIBERIA: Encouraging Investment?

REF A) MONROVIA 999; B) MONROVIA 336; C) MONROVIA 32

11. (SBU) Summary: In recent meetings with the Ambassador, two top GOL officials confirmed that they expect the revised Investment Code to pass quickly after the legislature convenes in mid-January. President Sirleaf has called on her Cabinet to expedite major concession agreements, but investors continue to express frustration at the slow pace of negotiations. New procedures designed to improve transparency continue to slow negotiations, and the Cabinet itself is divided on the appropriate balance between the need for revenue now and the need to provide incentives that recognize the challenges of starting a business in Liberia. End Summary.

GOL: Investment Code Will Pass

12. (SBU) Minister of State for Finance, Economic, and Legal Affairs Morris Saytumah, who serves as President Sirleaf's representative on concession negotiations, expressed certainty during a December 10 meeting with the Ambassador that the much-delayed revisions to the Investment Code (Ref B) would be re-submitted to the legislature in January and would pass without difficulty. According to the new Code, incentives will be standardized according to the size of the investment and the priority of the sector or region, rather than by the current time-consuming, discretionary process of negotiation. (Note: The draft Investment Code revision was withdrawn from legislative consideration last year after protests by members of the Liberian business community, who objected to the lack of consultation prior to elimination of protected sectors of the economy. The revised draft reflects a compromise. End note.)

Why are approvals so slow?

13. (U) By the numbers, investment is a success story in Liberia, having increased steadily from an admittedly low base of \$20 million in 2005 (excluding \$1 billion invested by Mittal Steel) to \$97 million in 2007. However, major U.S. investors in tree crops, minerals and other sectors are increasingly frustrated by the lack of progress in concession negotiations.

14. (SBU) During an introductory call on Chairman of the National Investment Commission (NIC) Richard Tolbert November 11, the Ambassador said U.S. investors report feeling sidelined as firms from other countries conclude deals. Noting reports that negotiations drag on, commitments are ignored, and meetings are cancelled at the last minute, she asked Tolbert if he was satisfied with the pace of investment approvals. (Note: The NIC, chaired by Tolbert, adjudicates requests for investment incentives. The other members of the Commission are the Minister of Finance; Minister of Justice; Minister of Planning & Economic Affairs; Minister of Commerce & Industry; and the Minister of State for Finance & Legal Affairs. End note.)

15. (SBU) Tolbert said he shares the frustration caused by his Cabinet colleagues' over-estimation of Liberia's appeal to investors and desire to secure short-term funding at the expense of longer-term goals. He reiterated President Sirleaf's call for flexibility in approving investments that will boost employment (Ref

A), and noted that Liberia is too small a market to attract major U.S. firms. He expressed appreciation for OPIC and ADF programs that support small-to-medium businesses in Liberia, and called on them to be expanded. He pointed out that investment creates a middle class, which provides political insurance for Liberia's stability.

¶16. (SBU) With regard to American investors specifically, Tolbert agreed the process has been lengthy. He blamed Liberia's volunteer outside lawyers, who review major agreements but tend to get tangled in endless detail. He also criticized U.S. firms' "take-it-or-leave-it" approach, calling for more patience and an understanding of the difficulty the GOL faces in negotiating agreements: there are very few qualified people, and so little technical support that even copying documents can be a challenge. He also criticized the tendency of U.S. investors to go straight to the President for help with every problem.

¶17. (SBU) Comment: From their statements in meetings with us, it is clear several major U.S. investors are considering Liberia only in response to President Sirleaf's personal request. They have a right to expect expeditious, transparent and professional negotiations, and to convey their concerns when the negotiation process stalls. There are tremendous opportunities for investors in Liberia, but the risks are high. As commodity prices drop, every deal delayed has cost Liberia money, and the lack of progress in concluding negotiations damages its reputation. Some delays are understandable given the complexity of proposed contracts, inexperience with new and complicated concession laws, and the lack of capacity within the government to engage investors efficiently. But other delays remain inexplicable and suggest to investors that the GOL is not always a reliable negotiator.

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¶18. (SBU) Comment continued: The USG has an interest in supporting GOL efforts to improve the legal and regulatory regime and to conclude concession agreements in line with international best practices. Investors also stand to benefit from improved transparency and accountability in the concession process, and the new procedures will help underpin growth and stability. Post will continue to support these reforms, but we will also continue to stress the need to be fair, professional and expeditious in response to legitimate proposals for investment. The draft Investment Code, while probably still not WTO compliant, will be an improvement and should remove most discretion from decisions on investment decisions and help expedite future deals.

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